

N.D.A.G. Letter to Hoy (Feb. 22, 1989)

February 22, 1989

Mr. Robert G. Hoy
Cass County State's Attorney
P.O. Box 2806
Fargo, ND 58108

Dear Mr. Hoy:

Thank you for your February 15, 1989, letter concerning a dissolution of two school districts. As part of those dissolutions, a question has arisen as to the appropriate recipient of the dissolved school districts' cash assets.

Your letter states that the dissolution of the school districts involved occurred pursuant to N.D.C.C. ch. 15-27.4. These statutes do not specifically mention the distribution of assets of a dissolved district upon its attachment to a receiving district. However, a portion of N.D.C.C. § 15-27.4-01 states that following the dissolution of a school district "the territory is part of the school district as fully in every respect as if it had been included in the district when organized." This language strongly suggests and implies that a dissolved district is treated as part of the receiving district in all respects upon completion of the dissolution process. It would be absurd and unjust to interpret this statutory language to require the dissolved district to be treated as part of the receiving district and yet to provide that assets of the dissolved districts are to be disbursed to an entity other than the receiving district.

In 1971 this office reviewed the question of the proper disbursement of a dissolved school district's building fund moneys upon attachment to a new district. The relevant statute in effect at that time was N.D.C.C. § 15-53.1-41. That statute included the same language now found within N.D.C.C. § 15-27.4-01 with respect to the inclusion of the territory of the dissolved district within the receiving district in all respects.

Speaking on behalf of the Attorney General, Assistant Attorney General Gerald VandeWalle indicated that building fund moneys are a part of the assets of a dissolved school district. The letter opinion concluded that, as such, these moneys should be forwarded to the school district to which the territory of the dissolved district was being attached. Letter from Gerald W. VandeWalle to M.F. Peterson (November 11, 1971). I concur with this 1971 opinion that the dissolved school district's assets are to be considered the assets of the school district to which the dissolved district's territory has been attached. There have been no statutory changes since the 1971 opinion requiring this office to reach a different decision. Indeed, the statutory language Present in 1971 continues to exist today.

A suggestion is made in your letter that a provision of N.D.C.C. § 15-27.2-04(6) is

applicable to this situation. That provision concerns annexations of school districts and indicates that the unobligated cash balance in excess of \$10,000 not designated for indebtedness shall be a credit for the residents of the annexed school district against taxes levied by the receiving school district in those years following the annexation.

This provision of N.D.C.C. § 15-27.2-04(6) was enacted in 1987 as Senate Bill No. 2520. 1987 N.D. Sess. Laws ch. 214. In speaking before the Senate Committee on Education, the bill's sponsor, Senator Don Moore, stated that "Senate Bill 2520 has to [do] with the annexation of school [district]." Hearing on S.2520 Before the House Committee on Education, 50th Leg., (February 10, 1987) (Statement of Sen. Moore). When the bill was heard by the House Committee on Education, Representative Williams, a member of the Committee, stated that the bill related only to annexations. on S.2520 Before Hearing the House Committee on Education, 50th Leg.,(March 11, 1987).

The specific words of N.D.C.C. § 15-27.2-04(6), as well as the relevant provisions of its legislative history, leave no doubt but that it applies only to annexations and not to the provisions of N.D.C.C. ch. 15-27.4. See also N.D.C.C. § 15-27.1-02.

In summary, it is my opinion that the assets of a school district which has been dissolved and attached to another district shall be considered the assets of the receiving district. This conclusion applies only with respect to the dissolution provisions of N.D.C.C. ch. 15-27.4.

I hope this information is helpful.

Sincerely,

Nicholas J. Spaeth

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